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No. 86-1194

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1986

PEOPLE OF THE TERRITORY OF GUAM,

Respondent,

vs.

JOHN F. FEGURGUR,

Petitioner.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

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INTRODUCTION

Respondent advances three arguments in opposition to this petition for certiorari. Each of these arguments is without merit and the petition should be granted.

1. Respondent's Argument Concerning Deference Is Both Irrelevant And Erroneous.

The majority of Respondent's brief is spent trying to convince this Court that if the District Court of Guam Appellate Division were allowed to interpret Guam's Bill of Rights, then the Ninth Circuit and this Court would not have to give "deference" to such an interpretation. This argument completely misses the point.

The issue in this case is whether the District Court of Guam Appellate Division can interpret Guam's Bill of Rights to provide for more expansive liberties than those conferred under analogous provisions of the Federal Constitution. The standard of appellate review to be applied to such interpretations is not at issue since

the Ninth Circuit has forbid the District Court of Guam Appellate Division from making such interpretations in the first instance. Therefore, Respondent's argument concerning "deference" is completely irrelevant and the issue is not before this Court.

However, should this Court ever have occasion to address the standard of review to be applied when reviewing the District Court of Guam Appellate Division's interpretations of the Bill of Rights, Petitioner respectfully submits that some deference should be granted to such interpretations. While Guam's Bill of Rights was most definitely enacted by the U.S. Congress, it was done so with the express knowledge and intent that it was to be a "local law" because it would only apply

in the Territory of Guam. The U.S. Congress simultaneously created the District Court of Guam Appellate Division, a local court, for the purpose of interpreting and applying this local law in addition to others.

Contrary to the assertions of the Respondent, numerous policy factors and judicial decisions suggest that local territorial courts are more suited to interpret "local law, custom or policy." Schneck v. Government of Guam, 609 F.2d 387 (9th Cir. 1979). While the Ninth Circuit and this Court should not forego review of a local territorial court's interpretation of Guam's Bill of Rights, there are certainly a lot of policy factors suggesting that some degree of deference should be granted to such decisions.

2. Section 1421b(u) Did Not Repeal By Implication Section 1421b(e).

Respondent notes that Guam's Bill of Rights was enacted before the section of the Organic Act making certain parts of the Federal Constitution applicable to Guam. Compare 48 U.S.C. Section 1421b(a) - (t) to 48 U.S.C. Section 1421b(u). Respondent thus concludes that when the U.S. Congress applied certain parts of the Federal Constitution to Guam, this enactment operated to repeal Guam's previously enacted Bill of Rights.

To begin with, when the U.S. Congress made certain parts of the Federal Constitution applicable to Guam, it did not repeal the segment of the Organic Act containing Guam's Bill of Rights. The U.S. Congress left Guam's Bill of Rights completely intact. This

clearly suggests that the U.S. Congress recognized that Guam's Bill of Rights was distinct and that it simply wanted to also make certain parts of the Federal Constitution applicable to Guam.

Furthermore, Respondent seems to ignore the fact that repeals by implication are highly disfavored.

> Our examination of the legislative history is guided by another maxim: "Repeals by implication are not favored." (Citations omitted). "The intent of the legislature to repeal must be clear and manifest." (Citations omitted). We must read the statutes to give effect to each if we can do so while preserving their sense and purpose. (Watt v. Alaska, 101 S.Ct. 1673, 1673 (1981).)

The Due Process Clause in Guam's Bill of Rights and the Due Process Clause in the Federal Constitution can each be "read . . .

to give effect to each . . . while preserving their sense and purpose." Therefore, there can be no repeal by implication.

3. The Fact That Guam's Bill Of Rights Was "Modeled" After The U.S. Constitution Is Of No Consequence.

Respondent makes much of the fact that Guam's Bill of Rights was "modeled" after the Federal Constitution. Surely no one is surprised to learn this fact. Did Respondent think that the U.S. Congress would have an irresistible creative urge and write its own little Bill of Rights for Guam or perhaps model Guam's Bill of Rights after one contained in Albania, Greece or Paraguay?

Of course Guam's Bill of Rights, like the Bill of Rights of many states, is modeled after the Federal

Constitution. Does this mean than Guam's Bill of Rights is meaningless? Does it mean that the U.S. Congress was simply engaging in an idle, duplicative legislative waste of time when it enacted Guam's Bill of Rights? The obvious answer is no.

Guam, like any state, has its own Bill of Rights and local courts should be allowed to interpret Guam's Bill of Rights. To do otherwise is to judicially declare Guam's Bill of Rights to be a nullity without any hint whatsoever that this was the intent of the U.S. Congress.

CONCLUSION

For the reasons which have been stated, Petitioner submits that this petition for certiorari should be granted.

Respectfully submitted this 26th day of February, 1987.

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